

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

THE TRUSTEES OF PURDUE *
UNIVERSITY * November 21, 2022
*
VS. *
* CIVIL ACTION NO. W-21-CV-727
STMICROELECTRONICS, INC.*
ET AL *

BEFORE THE HONORABLE ALAN D ALBRIGHT
DISCOVERY HEARING

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by computer-aided transcription.

10:59 1 (Hearing begins.)

10:59 2 THE BAILIFF: All rise.

10:59 3 DEPUTY CLERK: A Civil Action in Case

10:59 4 6:21-CV-727, the Trustees of Purdue University versus

10:59 5 STMicroelectronics, Incorporated, et al. Case called

10:59 6 for a discovery hearing.

10:59 7 THE COURT: Plaintiff's counsel?

11:00 8 MR. LAHAD: Good morning, Your Honor.

11:00 9 John Lahad of Susman Godfrey for the plaintiff.

11:00 10 Your Honor, my colleague Mr. Brian Melton

11:00 11 does send his regrets and hopes that you'll excuse him

11:00 12 from this hearing. My colleague Hayley Stillwell

11:00 13 became a mom for the first time last week and also

11:00 14 hopes that you'll excuse her from this hearing.

11:00 15 THE COURT: She has a better excuse than

11:00 16 Mr. Melton does, is my guess.

11:00 17 MR. SHORE: Michael Shore, Your Honor,

11:00 18 for Purdue University.

11:00 19 THE COURT: Mr. Ciccarelli?

11:00 20 MR. CICCARELLI: Your Honor, good

11:00 21 morning. Max Ciccarelli for the defendants.

11:00 22 I guess why don't you do -- we also have

11:00 23 two client representatives on the line. One is on the

11:00 24 line. Sorry. It's Katherine Chambers.

11:00 25 And then the other client representative

11:00 1 is in the courtroom and it's Christopher Ratway.

11:00 2 THE COURT: Very good.

11:00 3 MR. COHEN: Good morning, Your Honor.

11:00 4 Justin Cohen of Holland & Knight for the defendants.

11:00 5 THE COURT: Mr. Sostek?

11:00 6 MR. SOSTEK: Good morning, Your Honor.

11:00 7 Bruce Sostek for the defendants.

11:00 8 THE COURT: Pleasure to have you here.

11:00 9 MR. SHORE: Your Honor, Kenneth Waite

11:00 10 from Purdue is on the Zoom call.

11:00 11 THE COURT: Okay. Very good.

11:01 12 MR. CICCARELLI: Your Honor, one more

11:01 13 thing.

11:01 14 We also have some additional lawyers
11:01 15 since the Court said all counsel. We had one of our
11:01 16 lawyers, Rich Wynne, excused already by the Court. And
11:01 17 then with us here today is Katherine Reynolds and Dina
11:01 18 McKenney. And also counsel of the record is Mr. Thom
11:01 19 Tarnay who's also here today.

11:01 20 And that should be all of us.

11:01 21 THE COURT: Okay. And my understanding
11:01 22 is you all were able to work out everything with the
11:01 23 exception of some scheduling of some depositions in
11:01 24 Italy; is that correct?

11:01 25 MR. COHEN: That's correct, Your Honor.

11:01 1 THE COURT: Okay. I think maybe what we
11:01 2 ought to do is maybe I ought to have to be there for
11:01 3 these depositions to make sure they go off okay.

11:01 4 At any rate, I'm happy to hear from
11:01 5 either side as to what the issues are.

11:01 6 MR. SHORE: Your Honor, Purdue University
11:01 7 is a nonprofit research university. We have been
11:01 8 seeking the Rule 30(b)(6) corporate representatives
11:01 9 from ST for months.

11:01 10 We've actually had to have two orders
11:02 11 from Judge Gilliland. The last order was that they
11:02 12 were to designate all of their -- every corporate
11:02 13 representative possible on every topic possible by
11:02 14 October 28th.

11:02 15 They have still not designated all of the
11:02 16 corporate representatives even now.

11:02 17 THE COURT: Where are we at? What -- how
11:02 18 many have they done? What are we lacking?

11:02 19 MR. SHORE: Well, they've designated
11:02 20 four. I don't know how many more there will be
11:02 21 because --

11:02 22 THE COURT: In terms of topics, how many
11:02 23 topics have they covered?

11:02 24 MR. SHORE: I'd say probably 80 to
11:02 25 90 percent.

11:02 1 THE COURT: Okay.

11:02 2 MR. SHORE: A majority.

11:02 3 THE COURT: Okay.

11:02 4 MR. SHORE: Now, they are a Delaware
11:02 5 corporation. They are headquartered in Coppell, Texas.
11:02 6 So we are taking the deposition of a Coppell, Texas
11:02 7 resident. We are not taking the deposition of any
11:02 8 individuals. These are a deposition of the
11:02 9 corporation.

11:02 10 So far they have given us four
11:02 11 locations -- I'm sorry -- three locations. Two in
11:02 12 Dallas, which are fine because they're in Coppell,
11:03 13 Texas. A third one --

11:03 14 THE COURT: That sounds a lot less
11:03 15 attractive for me to attend than Italy.

11:03 16 MR. SHORE: I'm sorry?

11:03 17 THE COURT: That location, which I'm not
11:03 18 really familiar with, sounds less attractive. I might
11:03 19 send Judge Gilliland to attend that one.

11:03 20 MR. SHORE: So, anyway, there's -- so
11:03 21 there's two in Dallas. Then there's one in a small
11:03 22 town in Massachusetts which we also believe is improper
11:03 23 for a Texas corporation, to make us go to Massachusetts
11:03 24 to take the deposition of a corporation in Coppell.

11:03 25 But worse, they've designated one witness

11:03 1 in Italy. In Sicily. And to give you an idea, the law
11:03 2 on this is clear. We cited the precedential case, the
11:03 3 Kia case.

11:03 4 We're not taking depositions of people in
11:03 5 Italy. We're taking depositions of a U.S. corporation.
11:03 6 The law is we're supposed to do that at their principal
11:03 7 place of business or some other place "convenient to
11:03 8 the forum" which would be Waco.

11:03 9 THE COURT: Or Dallas, I think.

11:04 10 MR. SHORE: Or Dallas. Yes.

11:04 11 So here's the problem: Sicily does not
11:04 12 have court reporters. So we have to fly in a court
11:04 13 reporter. Sicily does not have translators, so we have
11:04 14 to fly in a translator. Sicily does not have
11:04 15 videographers, so we have to fly in a videographer.

11:04 16 It is not easy to get to Sicily. There
11:04 17 are no direct flights from Dallas or Houston, so you
11:04 18 either have to fly through Rome or London or Geneva or
11:04 19 some other place. It takes two days to get there with
11:04 20 the connections. You have to fly overnight. And then
11:04 21 to get home sit again another two days.

11:04 22 And you have to have, of course, hotel
11:04 23 rooms for the interpreters, hotel rooms for all of
11:04 24 these other people. And you have to have two
11:04 25 interpreters because they will only work in certain

11:04 1 shifts for certain amounts of time because they get
11:04 2 tired.

11:04 3 There has never been a case, and we've
11:04 4 looked, and I'm sure they have too, where a federal
11:05 5 district court has ruled that a U.S. company can just
11:05 6 designate people 7,000 miles away to be their corporate
11:05 7 representative. Especially in a case right here.
11:05 8 There's only one of them.

11:05 9 They've -- after we sent the chart saying
11:05 10 we should not have to go to Italy to take a Coppel
11:05 11 company's deposition, they designated a second person
11:05 12 in Italy on prior art. Which obviously you do not need
11:05 13 to have an Italian testify on prior art as an -- you
11:05 14 can prepare somebody to do that here. I think they did
11:05 15 that just as a -- so they could try to say that there's
11:05 16 more than one there.

11:05 17 Worse, they have also not only said that
11:05 18 they want us to go to Sicily to take one deposition
11:05 19 effectively. They are also refusing to even give us a
11:05 20 location for the deposition.

11:05 21 So they have a big facility there, a huge
11:05 22 factory there. And they're saying that we have to also
11:05 23 rent out a hotel conference room. So not only do we
11:05 24 have to fly to Sicily for the convenience of them, they
11:05 25 will not even give us a conference room to be in.

11:06 1 They're not willing to pay for any of the
11:06 2 costs of the court reporter, of the videographer, of
11:06 3 anything else.

11:06 4 They're basically saying, if you want to
11:06 5 take the deposition of a U.S. company based in Coppell,
11:06 6 you have to fly to Sicily and spend basically, between
11:06 7 time and money, \$100,000 to take a deposition.

11:06 8 It's unprecedented. It's unsupported by
11:06 9 the law. It's unsupported by the rules. And nothing
11:06 10 in their presentation to the Court where they're saying
11:06 11 this is a patent case, not a personal injury case,
11:06 12 there's not a separate set of rules for patent cases
11:06 13 when it comes to Rule 30(b)(6).

11:06 14 And they can't -- and they don't have a
11:06 15 good excuse. The Kia Motors case, they actually had to
11:06 16 bring three witnesses from Korea because in that case
11:06 17 the Court said, there's only three witnesses --

11:06 18 THE COURT: What year was that case? I'm
11:06 19 just curious. Was it pre-COVID?

11:06 20 MR. SHORE: It was. And I can get you
11:06 21 the cite here.

11:07 22 Pre-COVID. Yes. Pre-COVID.

11:07 23 THE COURT: Okay.

11:07 24 MR. SHORE: But then, again, these are
11:07 25 not depositions. These are the critical, technical

11:07 1 topics. This is not a deposition that should be taken
11:07 2 remotely. It's not a deposition --

11:07 3 THE COURT: Well, tell me why that is.
11:07 4 Because that was where I was going. Tell me why these
11:07 5 couldn't be taken by Zoom.

11:07 6 MR. SHORE: There's going to be a lot of
11:07 7 exhibits. And there's going to be a lot of technical
11:07 8 documents that are going to be needed to go back and
11:07 9 forth.

11:07 10 And I've been doing this a long time, and
11:07 11 when you have highly technical documents with a court
11:07 12 reporter who's going to be sitting there remote from
11:07 13 the lawyer -- from the lawyers...

11:07 14 And it's also going to be a foreign
11:07 15 language. They're saying they're going to do it in a
11:07 16 foreign language. So we have to have an interpreter, a
11:07 17 check interpreter. So every interpreter has -- so it
11:07 18 is going to be a slog.

11:07 19 It's going to be a slog under the best of
11:07 20 circumstances since they picked a witness who can only
11:07 21 supposedly testify in Italian. But this -- these are
11:08 22 the most important depositions for us.

11:08 23 THE COURT: So tell me at a high level,
11:08 24 you mentioned one was on validity. What are the -- and
11:08 25 I'm not sure why that's so highly technical, but --

11:08 1 MR. SHORE: That's not. That's not.
11:08 2 And, in fact, it's a deposition that probably doesn't
11:08 3 even have to be taken on that topic. And we can
11:08 4 probably wait for their expert witness. Because their
11:08 5 expert witness is going to have to opine on validity
11:08 6 anyway.

11:08 7 THE COURT: Right.

11:08 8 MR. SHORE: But what we'd asked about was
11:08 9 one of the topics was prior art products. That
11:08 10 deposition, I know exactly what products they're
11:08 11 talking about. I'm very familiar with them. That
11:08 12 deposition is not important. I think that's why they
11:08 13 tossed it in as a second deposition.

11:08 14 THE COURT: Got it.

11:08 15 MR. SHORE: But the other one goes to --
11:08 16 it goes to -- it goes to the process flows. It goes to
11:08 17 the nuances and different --

11:08 18 THE COURT: Well, help me out here. Just
11:08 19 these are the people who understand -- are going to
11:08 20 speak for the company about how, technically, their
11:09 21 products work?

11:09 22 MR. SHORE: How they're made.

11:09 23 THE COURT: Okay.

11:09 24 MR. SHORE: Why they're made the way
11:09 25 they're made. How easy it was to develop them.

11:09 1 THE COURT: Uh-huh.

11:09 2 MR. SHORE: How easy it was to develop
11:09 3 them. What the development process was. How they've
11:09 4 gone from yields. Whether or not their pricing is
11:09 5 based upon yields.

11:09 6 There's just a myriad of topics that go
11:09 7 into the manufacturing process, the design process,
11:09 8 computer-assisted design files, process flows. And I
11:09 9 believe there's about 20 different die or types.

11:09 10 And although we have asked them to
11:09 11 designate or agree to a representative part so that we
11:09 12 could simplify this down to only doing maybe one or two
11:09 13 or three parts, they have not agreed to do that.

11:09 14 So it's going to be a very long,
11:09 15 detailed, highly technical talking about machinery,
11:09 16 talking about implantation dosages, talking about
11:09 17 dopant profiles, talking about a lot of technical
11:09 18 detail that we need to be there so that we can
11:10 19 literally reach out and point to things and show the
11:10 20 witness things and do things that you just can't do on
11:10 21 a Zoom. You just can't do it remotely, especially when
11:10 22 it's translated.

11:10 23 And, again, it's only one witness. It's
11:10 24 one witness. And have him fly over here and give a
11:10 25 deposition for a couple of days and fly home. It's

11:10 1 very simple. We have court reporters, videographers,
11:10 2 translators. We have everything here. There's no
11:10 3 reason to have an army of -- well, not an army -- to
11:10 4 have a couple of lawyers and a paralegal to handle
11:10 5 exhibits fly to Italy and spend probably two or three
11:10 6 days in a hotel, along with all these other people, and
11:10 7 then spend two days flying back.

11:10 8 It's unprecedented. No court's ever
11:10 9 ruled it. The rules don't support it. And we,
11:10 10 frankly, think the two things we want them to do is
11:10 11 designate 30(b)(6) witnesses, preferably in one
11:10 12 location in the United States. If it's two, we'll
11:10 13 handle two, I guess, if we have to.

11:10 14 But to do it -- and also the other thing
11:11 15 is to give us these depositions this year. The dates
11:11 16 they gave us were late January, February, almost at the
11:11 17 close of the discovery period. Which means anything
11:11 18 you find out in your party depositions you're not going
11:11 19 to have time to follow up on.

11:11 20 Because, again, we started asking for
11:11 21 30(b)(6) deponents in August. We sent a formal notice
11:11 22 in September. We moved to compel because they refused
11:11 23 to give us dates. We have an order for them to give us
11:11 24 dates that they still have not complied with.

11:11 25 And I think, you know, all the factors

11:11 1 that support having them provide a witness, either
11:11 2 close to the venue of the dispute or close to their
11:11 3 principal place of business, there are no exceptions
11:11 4 that they can identify that would justify forcing us to
11:11 5 go to that type of trouble and effort to depose a U.S.
11:11 6 corporation 5,876 miles away.

11:11 7 THE COURT: Anything else?

11:11 8 MR. SHORE: No, Your Honor.

11:11 9 THE COURT: Thank you, sir.

11:11 10 Yes, sir.

11:11 11 MR. CICCARELLI: Thank you, Your Honor.

11:12 12 So there's at least five reasons why it
11:12 13 would be reasonable for the deposition to take place in
11:12 14 Italy, and I'd like to go through those briefly and
11:12 15 then also address the other points by Mr. Shore, if I
11:12 16 could.

11:12 17 The first is, it's standard practice, at
11:12 18 least as far as I've known for the last almost
11:12 19 30 years, for -- in patent litigation for lawyers to go
11:12 20 to where the witnesses are, even if it's a 30(b)(6).

11:12 21 If the witness works and lives somewhere,
11:12 22 you usually go. There it's standard practice. This is
11:12 23 not a personal injury case, like the case that they
11:12 24 rely on, in which case I would understand the facts are
11:12 25 a little bit different.

11:12 1 THE COURT: Let me ask you this: I don't
11:12 2 think Mr. Shore favored me with -- and maybe he doesn't
11:12 3 know. But the person who's selected I'm assuming is
11:12 4 the person -- I'm assuming while the -- if this is an
11:12 5 American company, is the work done in Italy?

11:12 6 MR. CICCARELLI: Yes, Your Honor. It's
11:12 7 in Italian subsidiary that designed the products,
11:12 8 created the products, makes the products.

11:13 9 THE COURT: So the person, unlike -- for
11:13 10 example, if it were a production of business records,
11:13 11 it could be pretty much anyone who could be the
11:13 12 30(b)(6).

11:13 13 MR. CICCARELLI: Yes.

11:13 14 THE COURT: Tell me, if you would, who
11:13 15 the person or persons are that you selected and why you
11:13 16 selected them as the 30(b)(6).

11:13 17 MR. CICCARELLI: Absolutely, Your Honor.

11:13 18 So the primary person is Mario Saggio,
11:13 19 M-a-r-i-o S-a-g-g-i-o. He is the lead of the team that
11:13 20 designed the products. So he is the guy when it comes
11:13 21 to working on these products and knowing these
11:13 22 products.

11:13 23 One of the reasons we're having the
11:13 24 deposition in Italy is that as much as he knows by
11:13 25 having lived through the whole process and as much work

11:13 1 as he has done and will do to get ready, there may be
11:13 2 some questions that come up at the deposition where he
11:13 3 needs his team. If he does that and he's here in the
11:13 4 U.S. and his team is asleep, that won't work very well.

11:13 5 By being in Italy, he will have his team
11:13 6 available in case he needs to follow up with them to
11:13 7 answer some questions. That was one of the reasons.

11:13 8 So that was one person.

11:13 9 The other person is Mr. -- I know his
11:14 10 name well and now I forget it. But in any event, he is
11:14 11 a designer of the prior art products.

11:14 12 There's two types of prior art products.
11:14 13 There's MD mesh, which Mr. Saggio is very familiar with
11:14 14 and he will be addressing, and then there are the other
11:14 15 products, which this other witness was involved in and
11:14 16 actually worked on designing.

11:14 17 So we're talking about the two people
11:14 18 that are the two people that have the knowledge that
11:14 19 Purdue is seeking.

11:14 20 And that's why, as much as we would like
11:14 21 to get somebody else prepared in the U.S., it would be
11:14 22 impossible to prepare somebody else to answer these
11:14 23 things like Mr. Saggio can, who actually designed the
11:14 24 products.

11:14 25 And we believe in preparing witnesses.

11:14 1 We think we need to put up that witness. So in
11:14 2 addition to the standard practice, the notice is also
11:14 3 to two companies. It's not just to ST, Inc., the
11:14 4 American company. It is also to ST International which
11:14 5 is a company from the Netherlands.

11:14 6 So they're going to have to travel to
11:15 7 Europe anyhow if they want that deposition. They have
11:15 8 joined the notice together. What we're doing to try to
11:15 9 make it more convenient is we are putting up the same
11:15 10 person to address the topics for both companies.

11:15 11 And so he's getting to do this in one
11:15 12 shot rather than two separate depositions for the
11:15 13 hundred or so topics that they have. So that is
11:15 14 another reason why it's perfectly okay for it to be in
11:15 15 Italy.

11:15 16 In terms of the location in Italy, we
11:15 17 have presented witnesses for this company before in
11:15 18 Sicily. And it's not that big of a deal to get court
11:15 19 reporters and videographers over. Flights are a dime a
11:15 20 dozen with easyJet and other airlines to get people
11:15 21 from Europe to Sicily to do this.

11:15 22 We actually even have our own check
11:15 23 interpreter. And if -- we can also share the check
11:15 24 interpreter if the interpreters want to trade on and
11:15 25 off. We've done that before.

11:15 1 So it's not uncommon for other plaintiffs
11:15 2 to go to Sicily to take 30(b)(6) depositions.

11:15 3 THE COURT: And there's no shortage of
11:16 4 translators there?

11:16 5 MR. CICCARELLI: I beg your pardon?

11:16 6 THE COURT: There's no shortage of
11:16 7 court -- certified --

11:16 8 MR. CICCARELLI: In Sicily proper, no.
11:16 9 But in mainland in Europe there are.

11:16 10 THE COURT: Okay.

11:16 11 MR. CICCARELLI: And in England there's a
11:16 12 bunch of them. In Germany and France there are some.

11:16 13 THE COURT: I took a deposition once in
11:16 14 Scotland and felt the whole time like I needed an
11:16 15 interpreter.

11:16 16 (Laughter.)

11:16 17 MR. CICCARELLI: Yeah.

11:16 18 The other reason, Your Honor, is all
11:16 19 along there's -- the parties have contemplated doing
11:16 20 depositions in Sicily. And these issues were raised
11:16 21 before Judge Gilliland, so I should probably address
11:16 22 them briefly for you, Your Honor.

11:16 23 And that is Purdue had noticed
11:16 24 depositions in Sicily. We actually gave them dates.
11:16 25 They had dates, they accepted the dates. They gave us

11:16 1 notices.

11:16 2 We went down there on multiple trips to
11:16 3 prepare these witnesses. And I was down there
11:16 4 preparing the witness when they canceled the remaining
11:16 5 depositions. And we had the check interpreter that we
11:16 6 had hired that had a non-refundable fee because she
11:17 7 dropped other work to be there.

11:17 8 So we were in Sicily ready -- one of the
11:17 9 witnesses was Mr. Saggio that they had noticed. And
11:17 10 this other witness that's going to talk about the other
11:17 11 prior art products, he was one of the other witnesses.
11:17 12 Mr. Shore canceled Mr. Saggio's deposition in part
11:17 13 because he didn't want to be there for two weeks, he
11:17 14 said.

11:17 15 So the complaint now that these
11:17 16 depositions are taking place late, they had them on the
11:17 17 calendar and scheduled to take place in September and
11:17 18 they decided not to take them.

11:17 19 Additionally, Judge Gilliland also ruled
11:17 20 at the October 14th hearing that he was not going to
11:17 21 order the witnesses to go to -- to come to the U.S., at
11:17 22 least at that time, unless something else developed.

11:17 23 He said, y'all work this out. Try to get
11:17 24 witnesses on the same schedule. Which we did. We're
11:17 25 trying to put witnesses on the same schedule so they

11:17 1 only make one trip down to Sicily. They have not made
11:17 2 a trip to Sicily.

11:17 3 On the other hand, we have incurred
11:17 4 expenses going to Sicily for nothing because they
11:18 5 withdrew those notices.

11:18 6 And then, Your Honor, the remote
11:18 7 deposition, you mentioned Judge Gilliland actually
11:18 8 raised it for the first time. I believe the Kia Motors
11:18 9 case was pre-COVID. The world has changed. And going
11:18 10 through technical documents is actually probably easier
11:18 11 on a screen than it is leaning over a conference room
11:18 12 table pointing over.

11:18 13 Mr. Shore mentioned the conference room.
11:18 14 I explained to him we would love to host them. The
11:18 15 problem is there aren't enough conferences rooms.
11:18 16 There's a lot of construction going on. If he wants,
11:18 17 we can rent the hotel room and provide a conference --

11:18 18 THE COURT: I'm sure we've all had the
11:18 19 experience of getting to sit in the embassy in Japan
11:18 20 having to take depositions. So I get that.

11:18 21 MR. CICCARELLI: And with respect to
11:18 22 representative parts, Your Honor, what we've told
11:18 23 Mr. Shore is: Make us a proposal and we will look at
11:18 24 it. He has not yet made a proposal. And --

11:18 25 THE COURT: What is the earliest -- I

11:18 1 think Mr. Shore said late January, but he might have
11:19 2 said February. I don't remember.

11:19 3 When is the earliest your folks could be
11:19 4 made available?

11:19 5 MR. CICCARELLI: So, Your Honor, the
11:19 6 schedule that we have given them includes depositions
11:19 7 that were scheduled for tomorrow, but we found out
11:19 8 after presenting the date that the witness had a
11:19 9 medical procedure that went even more invasively than
11:19 10 expected. And so we are moving tomorrow's deposition
11:19 11 and we've already communicated. That's going to be
11:19 12 moved to December 30th.

11:19 13 So we have one on --

11:19 14 THE COURT: Is that a Dallas deposition?

11:19 15 MR. CICCARELLI: That is in Austin.

11:19 16 THE COURT: Okay. But local?

11:19 17 MR. CICCARELLI: Yes. Local.

11:19 18 Then we have Mario Saggio on January 25th
11:19 19 and 26th. And then we have Antonio Grimaldi, who's the
11:19 20 other gentleman that's going to address the prior art
11:19 21 parts on the 27th. So January 25th, 26th and 27th are
11:19 22 the dates that they are slotted.

11:19 23 And then we have a licensing person on
11:19 24 January 20th and a --

11:20 25 THE COURT: Where is that?

11:20 1 MR. CICCARELLI: Sorry?

11:20 2 THE COURT: Where?

11:20 3 MR. CICCARELLI: That one is in Dallas.

11:20 4 THE COURT: Okay.

11:20 5 MR. CICCARELLI: And then we have a
11:20 6 damages, like sales numbers, guy on February 2nd in
11:20 7 Dallas.

11:20 8 THE COURT: And when is the -- when does
11:20 9 fact discovery end?

11:20 10 MR. CICCARELLI: February 21st.

11:20 11 So there's holidays here, Your Honor,
11:20 12 right? There's Thanksgiving. There's Christmas. I've
11:20 13 made already five trips to Italy trying to get these
11:20 14 witnesses ready, to get documents for Mr. Shore.

11:20 15 We're at a stage now where there's no
11:20 16 complaint at all about the technical documents that we
11:20 17 produced. We would like, though, some time to prepare
11:20 18 these witnesses the way that they need to be prepared
11:20 19 so we don't have disputes later. And that's why we
11:20 20 came up with the schedule.

11:20 21 We have a schedule ready so we can get
11:20 22 them prepped by those days. And so we'd ask the Court
11:20 23 to not alter that schedule that we've been operating
11:20 24 under to get these guys ready.

11:20 25 THE COURT: Thank you. One second.

11:21 1 MR. CICCARELLI: And that's it.

11:21 2 THE COURT: Yes, sir?

11:21 3 MR. SHORE: Just quickly.

11:21 4 I've never in 35 years had someone stop
11:21 5 in the middle of a deposition and do a phone a friend
11:21 6 or check with the team. And they can do that, by the
11:21 7 way, by phone. They don't need to walk out of the
11:21 8 factory or whatever.

11:21 9 And by the way, they won't be in the
11:21 10 factory. We'll be at a hotel. So they'd have to call
11:21 11 anyway. So they can call -- if they can call from the
11:21 12 hotel, then they can call from here.

11:21 13 THE COURT: I think you're -- are you
11:21 14 saying if they're here they can call from the hotel?

11:21 15 MR. SHORE: If they're here, they can
11:22 16 call just like they would --

11:22 17 THE COURT: But I think the point is -- I
11:22 18 may be missing this, but if they -- if it's 4 o'clock
11:22 19 here, I think the point is -- and it'll be midnight or
11:22 20 1:00 there. I don't think the problem is the
11:22 21 communicating. I think the problem is that if --

11:22 22 I think what Mr. Ciccarelli was telling
11:22 23 me was it'll be easier if you're taking the deposition
11:22 24 at 3 o'clock there and the person they have to call is
11:22 25 at 3 o'clock there, that they'll be able to get the

11:22 1 person. That was what I took that to mean.

11:22 2 MR. SHORE: Yeah. That eliminates any
11:22 3 Zoom depositions then. Unless we're going to do Zoom depositions
11:22 4 in the middle of the night.

11:22 5 THE COURT: Well, I don't think it does.
11:22 6 I mean, I -- you know, Mr. Shore, maybe -- and I never
11:22 7 thought I would say this about you being someone who's
11:22 8 kinder and gentler and having a hard time. But I mean,
11:22 9 I'm trying to think of the depositions I took at 3:00
11:22 10 in the morning of Asian companies.

11:22 11 I get your point is this is an American
11:22 12 company, bring them here. But I'm thinking of the
11:23 13 times I sat in the U.S. embassy in Japan because you
11:23 14 can't take them there. I've taken depositions in Macao
11:23 15 because you can't take them in China.

11:23 16 I'm just -- I'm not fully understanding
11:23 17 your unhappiness -- the level of your unhappiness here.

11:23 18 MR. SHORE: The level of my unhappiness
11:23 19 is I've done the same thing. But when I'm taking a
11:23 20 deposition in Japan, it's a 30(b)(1) deposition or a
11:23 21 30(b)(6) of a Japanese company.

11:23 22 It's not an -- and it's not a company in
11:23 23 Coppel. We are -- we did not -- this would be like us
11:23 24 saying we're going to have Purdue choose a researcher
11:23 25 at the arctic lab and you can go to Antarctica to

11:23 1 depose them because that's where he works.

11:23 2 That is not the -- that's not the test
11:23 3 for a 30(b)(6). It's principal place of business of
11:23 4 the company or a place convenient to the forum. Which
11:23 5 they have not expressed a single exception to the rule
11:23 6 that they can.

11:23 7 THE COURT: Okay.

11:23 8 MR. SHORE: The other thing that I think
11:24 9 is strange is they're saying that we canceled depositions in
11:24 10 Sicily. First of all, those were --

11:24 11 THE COURT: I don't pay any attention --
11:24 12 I'm -- if I can't make this clear enough, I'm here to
11:24 13 fix this.

11:24 14 MR. SHORE: Right.

11:24 15 THE COURT: I'm here to -- I'm an ER doc.
11:24 16 What someone was doing on their motorcycle when they
11:24 17 had the accident, I don't care about. I'm just -- I
11:24 18 just need to fix the patient right now. I just need
11:24 19 to -- I just want to figure out what to do with this
11:24 20 depo.

11:24 21 MR. SHORE: Here's what I think would
11:24 22 be -- and, again, we believe we already have to go to
11:24 23 Massachusetts, Austin, Dallas, we've already got three
11:24 24 locations for one company.

11:24 25 Now they're trying to set up a fourth in

11:24 1 Sicily. None of these defendants are in Sicily, none
11:24 2 of them. The STNV is not in Sicily, none of them are
11:24 3 in Sicily. Sicily is a particularly inconvenient forum
11:24 4 because you have to fly in everybody.

11:24 5 Now, if they want to pay for our flights,
11:25 6 if they want to pay for the court reporter, if they
11:25 7 want to pay for the videographer, if they want to pay
11:25 8 for the translator, if they want to pay for our hotels,
11:25 9 and they want to do it -- and so it's no more expensive
11:25 10 for us than it is taking it where they reside, that
11:25 11 would be one thing. They're not offering anything.
11:25 12 They're --

11:25 13 THE COURT: I assume your -- it doesn't
11:25 14 make a great difference to you with the -- your
11:25 15 concerns aren't the Austin and Dallas depositions, I take it?

11:25 16 MR. SHORE: My concerns are not the
11:25 17 Austin and Dallas deposition, and I'll even go to
11:25 18 Massachusetts to take the guy and just --

11:25 19 THE COURT: Who is the 30(b)(6) in
11:25 20 Massachusetts? What topics is he or her?

11:25 21 I guess -- it doesn't matter. What
11:25 22 topics will the Massachusetts witness be?

11:25 23 MR. CICCARELLI: He's one witness I
11:25 24 forgot, and it's Alfredo Arno. He's on some marketing
11:25 25 topics.

11:25 1 THE COURT: And is there a reason he
11:25 2 couldn't be done by Zoom?

11:25 3 MR. SHORE: I'm not going to take that
11:25 4 deposition, so I don't know. That's going to be
11:26 5 handled by Susman Godfrey, the one in Massachusetts.

11:26 6 THE COURT: Well, they're, you know, and
11:26 7 they're -- they've got someone -- my favorite law clerk
11:26 8 works in their New York office. He probably shouldn't
11:26 9 work on this, but I know they're close.

11:26 10 But it seems to me that you don't have
11:26 11 the same concerns with the Massachusetts inconvenience
11:26 12 on a marketing deal because that's something that could
11:26 13 easily be done by Zoom, I would think, probably even
11:26 14 preferably.

11:26 15 MR. SHORE: The -- yeah. The technical
11:26 16 aspect of this depo in Sicily, especially with it being
11:26 17 interpreted and extremely document intensive -- and
11:26 18 yes. We did already provide them an exemplar part
11:26 19 number weeks ago, which they have not responded to.

11:26 20 So we're going to have to take this
11:26 21 deposition on all of the die, all of the accused parts.
11:26 22 It is going to be a long slog of a deposition, and it's
11:26 23 going to be one where, when you're dealing with a lot
11:26 24 of technical terms, there's a lot of ability for
11:27 25 misunderstanding.

11:27 1 THE COURT: Got it.

11:27 2 MR. SHORE: And so that's why, again,
11:27 3 they haven't set out any of the reasons to deviate from
11:27 4 the rule. And the rule is not where the witness
11:27 5 provides. The rule is -- in the rule, it's where the
11:27 6 principal place of business of the corporation is.

11:27 7 And they've offered no accommodations.
11:27 8 And literally it would cost us more than \$125,000 to go
11:27 9 take a deposition in Sicily that could be taken for
11:27 10 1/10 of that amount if it was taken in the United
11:27 11 States.

11:27 12 And he's an employee. I mean, this is
11:27 13 not a third party that is being inconvenienced. This
11:27 14 is someone they chose.

11:27 15 THE COURT: I got it.

11:27 16 Anything else, Mr. Ciccarelli?

11:27 17 MR. CICCARELLI: We're giving him the
11:27 18 person that has the knowledge they want on behalf of
11:27 19 two companies to make it easier on them.

11:27 20 That's it, Your Honor.

11:27 21 THE COURT: Okay. Here's what I'm going
11:27 22 to do. I'm going to allow the deposition to be taken
11:27 23 in Italy.

11:27 24 But here's -- Mr. Shore did raise
11:28 25 something that I have some concern about. Which is it

11:28 1 does seem to me that if possible that an effort should
11:28 2 be made to find an exemplar part. So if the parties --
11:28 3 I'll give y'all -- it's Thanksgiving. So let's forget
11:28 4 next week. But I'll give y'all three weeks to try and
11:28 5 figure out what to do about that, to try and see if you
11:28 6 can work that out.

11:28 7 Mr. Shore, if you -- if you all can't
11:28 8 work that out, then set a hearing with either me or
11:28 9 Judge Gilliland and I'll find out what I can do to help
11:28 10 in that regard.

11:28 11 Also, what I would suggest you do -- I've
11:28 12 made this suggestion in the past. You're free to
11:28 13 reject it, but I find with 30(b)(6) depositions, unlike
11:28 14 30(b)(1) depositions, that it's very helpful to send to
11:29 15 the other side -- with respect to the exhibits you
11:29 16 intend to use, I find it's very helpful to send the
11:29 17 exhibits well ahead of time. And actually say these
11:29 18 are going to be the exhibits we want to cross-examine
11:29 19 the -- it's not expert -- the 30(b)(6) on. And here
11:29 20 are the questions we intend to ask.

11:29 21 Now, you're not limited to those
11:29 22 questions in any way. I see it as something very
11:29 23 prophylactic. Because if you send to the defendant,
11:29 24 I'm going to ask the following 16 questions about
11:29 25 Exhibit 12 to this witness, then it will be incumbent

11:29 1 upon the people preparing the witness to either prepare
11:29 2 them or let you know in advance they think for some
11:29 3 reason it would be -- it -- there's some reason they
11:29 4 shouldn't have to be prepared on it. Or the witness
11:29 5 can go find out early what the information is and they
11:30 6 can be prepared to go.

11:30 7 And I will tell -- since it's the
11:30 8 plaintiff in this case that's taking the deposition
11:30 9 that if you have forwarded to Mr. Ciccarelli and team
11:30 10 300 questions that are all cricket and that you think
11:30 11 should be answered and you've told them what exhibits
11:30 12 you intend to ask them about, you will find a great
11:30 13 friend in the Court if they provide someone to you who
11:30 14 says, I don't know. That will be very unfortunate.

11:30 15 Now, "I don't know" is different than "I
11:30 16 don't know and nobody knows." I mean, if -- you know,
11:30 17 if you ask a question and the answer is we don't have
11:30 18 any and I've checked and no one else knows either, you
11:30 19 know, that's -- then -- and you exhausted it.

11:30 20 What I'm saying is they don't get to say,
11:30 21 oh, I didn't know that that was the topic that you were
11:30 22 being asked -- I was being asked about. Or I didn't --
11:30 23 I would -- that's Joe. We should have talked to Joe.

11:31 24 I want -- given the expense that'll be
11:31 25 involved here, I propose -- I will suggest to the

11:31 1 plaintiff that you be as fulsome --

11:31 2 I did this. I mean, when I had --
11:31 3 especially if I had depositions in Asia, I sent on
11:31 4 anything -- I sent all the exhibits ahead early. I
11:31 5 sent all the questions I was going to ask. And I
11:31 6 expected the person who showed up to be able to answer
11:31 7 those questions. Because there's no mystery here what
11:31 8 you're trying to -- the information you're trying to
11:31 9 get.

11:31 10 I'm not telling the defendant you have to
11:31 11 answer every question that you get sent if for some
11:31 12 reason you believe it's not an appropriate question.
11:31 13 But if you do get a question you think's inappropriate,
11:31 14 you need to give the plaintiff advance notice of that.
11:31 15 And either you all work it out and there's an agreement
11:31 16 that they will change the question or you will answer
11:31 17 the question or whatever.

11:31 18 And if you can't, then set another
11:32 19 hearing. And if there are enough of those, I'll go
11:32 20 through them and I'll -- I will rule on which questions
11:32 21 are and are not appropriate.

11:32 22 So the plaintiff in my -- it would be
11:32 23 very helpful for the plaintiff to let the defendant
11:32 24 know as many questions and issues as you hope the
11:32 25 witness would be prepared for at a 30(b)(6) because

11:32 1 it's the corporate knowledge, not the individual's
11:32 2 knowledge.

11:32 3 And I would -- I would hope that the
11:32 4 defendant would be as cooperative as possible and
11:32 5 answer as much of that information, regardless of
11:32 6 whether you think it's relevant or not. Relevance
11:32 7 would not be a great test -- would not be a great
11:32 8 objection. If the plaintiff says they want it, then I
11:32 9 probably will be pretty -- I will probably be pretty
11:32 10 easy to convince that they should get it because I
11:32 11 won't understand why -- what the relevance is at this
11:32 12 point.

11:32 13 Is there -- oh, timing. Let me take up
11:32 14 timing.

11:32 15 I understand why there are problems.
11:32 16 It's that time of the year. It seems to me what would
11:33 17 be fair to both sides is to push back the deadline for
11:33 18 the discovery deadline so that -- and since, to some
11:33 19 extent, I am disadvantaging the plaintiff by allowing
11:33 20 the deposition to take place later in January -- not
11:33 21 unfairly, I don't think there's anything unfair about
11:33 22 this. I'm just saying, I understand a late January
11:33 23 deposition and an early February deadline might be
11:33 24 tight.

11:33 25 Mr. Shore, when would you suggest I make

11:33 1 the discovery deadline?

11:33 2 MR. SHORE: Your Honor, I have a trial
11:33 3 for the University of Texas starting January 23rd.

11:33 4 THE COURT: Who's it in front of?

11:33 5 MR. SHORE: In front of Judge Williams, a
11:33 6 new judge in Delaware.

11:33 7 THE COURT: Oh, great.

11:33 8 MR. SHORE: So yes. He took the bench
11:33 9 and Judge Noreika handed him a trial. And --

11:33 10 THE COURT: She is so -- she's just a
11:33 11 great judge, and I think I would have done the same
11:34 12 thing.

11:34 13 MR. SHORE: Well, we were supposed to
11:34 14 go --

11:34 15 THE COURT: I'm glad -- I'd not heard
11:34 16 he'd gotten confirmed. I think that's wonderful. I
11:34 17 sent him a note when he got nominated. His -- he's got
11:34 18 sterling credentials. I hope he does great. So I'm
11:34 19 very excited.

11:34 20 MR. SHORE: So far he's been wonderful to
11:34 21 us. So --

11:34 22 THE COURT: Not as good as I am, I'm
11:34 23 certain. But still he looked like -- I'll have to send
11:34 24 him another note now that I know he's on the bench and
11:34 25 wish him well.

11:34 1 And so again you just -- you just tell me
11:34 2 what date you think is appropriate, and I will -- and
11:34 3 especially since you have -- and by the way, let me say
11:34 4 also, I don't know your role in the depositions, but if
11:34 5 your role in the trial and your necessity in the
11:34 6 depositions requires it be some other date, you guys
11:34 7 work out those dates and you guys work out the deadline
11:34 8 for discovery.

11:34 9 Because if you have a trial already set
11:34 10 in Delaware, I'm not -- that, to me, trumps getting
11:34 11 this done. You need to get that done.

11:35 12 You guys -- we don't need to do that
11:35 13 here. You guys figure out the dates and just let us
11:35 14 know what they'll be.

11:35 15 MR. SHORE: Right. And the only thing
11:35 16 that Purdue would request is that there be some sort of
11:35 17 burden shifting. If they are going to be allowed to
11:35 18 pick someone in Sicily, we would ask -- we think, in
11:35 19 fairness and equity, they should have to pay all of the
11:35 20 extra costs --

11:35 21 THE COURT: I think I heard you say that
11:35 22 earlier. I didn't miss it, and I'm not going to do
11:35 23 that.

11:35 24 Now, at the end of the trial, you know,
11:35 25 you know, if you win, these will be costs.

11:35 1 So I think that's the way it works,
11:35 2 right?

11:35 3 MR. SHORE: Well, not for the travel and
11:35 4 hotels. I'm not sure --

11:35 5 THE COURT: Well, I think I can, you
11:35 6 know --

11:35 7 MR. SHORE: But we'll ask.

11:35 8 THE COURT: No. I'm saying. If in this
11:35 9 case -- you know, most cases don't go through trial.
11:35 10 I've been blessed that many have. Some -- one with you
11:35 11 on it.

11:35 12 If -- I won't forget this. If you all
11:36 13 have to go to trial and you all are successful and you
11:36 14 think this is something that your client should be
11:36 15 appropriately, you know, taken care of for, I will
11:36 16 absolutely consider it.

11:36 17 MR. SHORE: And would you at least order
11:36 18 them to provide a conference room at their facility so
11:36 19 that we don't have to rent a hotel room for it?

11:36 20 THE COURT: You know, the problem with
11:36 21 that is I don't think it's fair. I understand what
11:36 22 you're saying, but I don't -- whether we like it or
11:36 23 not, in my opinion, you all -- you all being the
11:36 24 plaintiff's counsel -- get an unfair advantage by
11:36 25 getting to go on their campus when otherwise you

11:36 1 wouldn't. And I just -- I've never thought that was
11:36 2 fair.

11:36 3 And so but I'll tell you what. Let's do
11:36 4 this: I'll give the defendant the option. Since
11:36 5 defendant does have facilities there, if the defendants
11:36 6 decide that they don't want to allow depositions to
11:36 7 take place on their facilities, then I will require
11:36 8 them to pay for facilities for the depositions to be
11:37 9 taken at.

11:37 10 So they can -- they have the choice. If
11:37 11 they would like to spare the expense and have -- and
11:37 12 provide a place on their facilities which they have,
11:37 13 they can do that. If they refuse to do that, then I
11:37 14 will have them pay for the expense of the facilities
11:37 15 for the depositions. I think -- I do think that's
11:37 16 fair.

11:37 17 MR. SHORE: And then the last, I guess,
11:37 18 two things. Since these depositions are going to be
11:37 19 translated and that means it's going to be double time
11:37 20 to take them, if they are going to produce this other
11:37 21 witness in Sicily, can we ask that they produce them at
11:37 22 the same time and that we double track those so that we
11:37 23 don't end up having to spend all that extra time?

11:37 24 Because they're totally unrelated
11:37 25 depositions. One of them is this prior art thing. And

11:37 1 we'd like to just double track them so that we don't
11:37 2 end up having to spend an extra two days in Sicily.

11:37 3 THE COURT: But I don't know which
11:37 4 lawyers are planning to defend the depositions and
11:37 5 which lawyers need to prepare them. So I'm not going
11:38 6 to order that either.

11:38 7 MR. SHORE: All right. And then the last
11:38 8 thing is if we decide to forego --

11:38 9 THE COURT: You see, the problem you all
11:38 10 have as a group, for better or worse, many say worse,
11:38 11 I've read. I did all this. I mean, I've -- you know,
11:38 12 when you're saying this, I mean, I'm sure there is a
11:38 13 judge, a wonderful judge in Nebraska who never had to
11:38 14 go to Macao to take a deposition. And, you know, all
11:38 15 this stuff, you know. He's thinking, gosh, why do
11:38 16 these guys fight over all this?

11:38 17 I have been through -- everything you're
11:38 18 saying I've been on both sides of. So I'm doing my
11:38 19 very best to be fair to both sides, because I've been
11:38 20 on both sides of this.

11:38 21 MR. SHORE: I understand.

11:38 22 And but the last thing is if we decide to
11:38 23 forego the trip and take it by Zoom, it will be during
11:38 24 office hours in the United States that we take the
11:38 25 deposition of a United States company.

11:38 1 THE COURT: I will agree to that too, to
11:38 2 save the expense.

11:38 3 Now, let me say this: But you need to --
11:38 4 I'll pick you. By you I mean the plaintiff's counsel
11:39 5 this time.

11:39 6 Well, the parties need to come up with a
11:39 7 date. And then the burden will be on the plaintiff for
11:39 8 you to decide by when you have to say we're going to do
11:39 9 it by Zoom. In other words, because I don't want the
11:39 10 defendant to incur expense that they have to eat
11:39 11 because you change your mind past a certain date.

11:39 12 So huddle with defense counsel before you
11:39 13 leave here today and give them a date. Y'all work out
11:39 14 a date by when you will tell them whether or not you're
11:39 15 going to do it by Zoom.

11:39 16 I personally think Zoom is great for
11:39 17 these depositions. I think it's one of the best things
11:39 18 that's happened.

11:39 19 Again, the way I would do them is I would
11:39 20 send to their corporate witness, here's the question
11:39 21 I'm going to ask you on this exhibit. So when you're
11:39 22 asking that witness by Zoom, please turn to Exhibit 13,
11:39 23 the witness will already have had it. He'll already
11:39 24 have that page. He will know what the question is.
11:40 25 And you can say, tell me what this is.

11:40 1 Because most of what you're trying to do
11:40 2 is just to get him to verify under oath something that
11:40 3 you know is true so you can hand it to his -- your
11:40 4 experts. And also at trial you both -- it's both
11:40 5 admissible and you know they won't come in and say
11:40 6 something that screws you when you're -- during trial.

11:40 7 That's why I think Zoom is great for this
11:40 8 type of stuff, and that's why I think it would be great
11:40 9 to take it by Zoom in this case.

11:40 10 I'm -- where you find yourself behind the
11:40 11 eight ball here is, if this were a 30(b)(1) witness, I
11:40 12 would be more sympathetic about doing it in person.

11:40 13 I get why you want to take the CEO's
11:40 14 deposition with him sitting there in person when you're
11:40 15 asking him, why didn't you do this deal? I get that.

11:40 16 But for a 30(b)(6), there's really, in my
11:40 17 opinion, nothing you're asking them that should be a
11:40 18 surprise. If it's a surprise, then you screwed up by
11:40 19 not letting them know what the topic was.

11:41 20 And so -- but you all come up with a
11:41 21 date. This is the group, you all come up with a date
11:41 22 by when the plaintiff will decide whether to do it in
11:41 23 person or by Zoom and plan on doing it in person until
11:41 24 that date. That's the drop-dead date. And then
11:41 25 whatever y'all do is absolutely fine with me.

11:41 1 But also come up with dates by when the
11:41 2 depositions will take place, and also what -- let us
11:41 3 know what the discovery deadline is and whether we need
11:41 4 to have any adjustments in our schedule.

11:41 5 MR. SHORE: Thank you, Your Honor.

11:41 6 THE COURT: Anything else?

11:41 7 MR. CICCARELLI: No, Your Honor. Thank
11:41 8 you.

11:41 9 THE COURT: Okay. I wish you the best of
11:41 10 luck with Judge Williams. And please let me know --
11:41 11 report back. I'll let Judge Noreika know how happy you
11:41 12 are that you got off of her docket and onto Judge
11:41 13 Williams'.

11:41 14 MR. SHORE: Judge Williams is so far so
11:41 15 good.

11:41 16 THE COURT: But she's one of my best
11:41 17 friends too, so...

11:41 18 MR. SHORE: Well, she always ruled for us
11:41 19 across the board. So we weren't thrilled about losing
11:42 20 her, but now that he's come in, he's done a great job.

11:42 21 THE COURT: Well, I had the great good
11:42 22 fortune to go on the bench about the same time she did
11:42 23 and even greater fortune that she actually knows what
11:42 24 she's doing in the IP world.

11:42 25 And so whenever I have a hard question,

11:42 1 she's sort of my go-to, someone who is also a judge
11:42 2 that really knows what they're doing who can give me
11:42 3 good advice. So I think she's all aces.

11:42 4 So y'all have a great Thanksgiving.

11:42 5 THE BAILIFF: All rise.

11:42 6 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
8 correct transcript from the record of proceedings in
9 the above-entitled matter.

10 I certify that the transcript fees and
11 format comply with those prescribed by the Court and
12 Judicial Conference of the United States.

13 Certified to by me this 23rd day of
14 November 2022.

15
16 /s/ Kristie M. Davis
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